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Supreme Court, U.S.
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

COMMONWEALTH OF MASSACHUSETTS,

Cross-Petitioner,

v.

OTIS R. BOWEN, SECRETARY OF
HEALTH AND HUMAN SERVICES, ET AL.,

Cross-Respondents.

Cross-Petition for a Writ
of Certiorari to the United
States Court of Appeals
for the First Circuit

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QUESTION PRESENTED

Whether the United States District Court has jurisdiction under 28 U.S.C. § 1331, and 5 U.S.C. §§ 701, et seq., to grant complete relief in an action which seeks judicial review of a final decision of the Secretary of Health and Human Services to deny coverage under the Medicaid Act of certain services rendered by a State to retarded citizens.

PARTIES

This cross-petition is submitted on behalf of the Department of Public Welfare of the Commonwealth of Massachusetts (referred to herein as "the Commonwealth").

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<u>No.</u>
IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1987
COMMONWEALTH OF MASSACHUSETTS, Cross-Petitioner, v. OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL., Cross-Respondents.
CROSS-PETITION OF THE COMMONWEALTH OF MASSACHUSETTS

Pursuant to Supreme Court Rule 19.5, the Commonwealth of Massachusetts submits this cross-petition for a writ of certiorari and requests that if the Secretary's petition in No. 87-712 is granted, this cross-petition be granted as well.

OPINIONS BELOW

The opinions below are identified in the Commonwealth's brief in opposition. The texts of those opinions appear in the separately bound appendix to the Secretary's petition.

JURISDICTION

An explanation of the basis for the Court's jurisdiction over the petition of the Secretary is set forth in the petition at pp. 1-2. The Court has jurisdiction over the cross-petition under 28 U.S.C. § 1254(1). The cross-petition is filed pursuant to Supreme Court Rule 19.5. The petition for a writ of

certiorari was received on November 2, 1987.

STATUTES INVOLVED

The statutes involved in the Commonwealth's cross-petition are those set forth in the petition at pp. 2-3 and in the corresponding section of the Commonwealth's brief in opposition.

STATEMENT OF THE CASE

The statement of the case relevant to the cross-petition is the same as that set forth in the Commonwealth's brief in opposition.

REASONS WHY THE CROSS-PETITION
SHOULD BE GRANTED

THE JURISDICTION OF THE
DISTRICT COURT TO GRANT
COMPLETE RELIEF IS AN IMPORTANT
QUESTION AND ONE CLOSELY
RELATED TO THE PETITION.

In this cross-petition the Commonwealth argues that if the Secretary's petition for a writ of certiorari is granted, the Court should also review the question of whether the district courts have jurisdiction to grant complete relief in an action seeking review of a Medicaid disallowance. In the arguments below we demonstrate that (1) the question of district court jurisdiction to grant complete relief is closely related to the question presented by the Secretary, and likely to be briefed by the parties in the event that the Court

grants the petition, and (2) the question of full district court jurisdiction is an important issue which was incorrectly decided below and likely to recur in the absence of plenary consideration by the Court.

1. In the First Circuit, the Commonwealth argued that the court should affirm the district court's exercise of jurisdiction. The Commonwealth argued that Bell v. New Jersey, 461 U.S. 773 (1983), supported complete district court review of the "propriety" of a decision of a federal agency to "disallow" federal reimbursement in programs such as Medicaid. The Commonwealth further argued that 5 U.S.C. § 702's waiver of sovereign immunity applied to its petition for judicial review and that the petition

fell within the federal question jurisdiction of the district court. The Commonwealth maintained that the district court could reverse the Grant Appeals Board and, if need be, order the Secretary to abide by the Medicaid Act, his regulations, and the decision of the district court. The Commonwealth noted that there would be no need to order the payment of money, as such, in order to fully enforce the decision of the district court.

The First Circuit held that while the district court "had jurisdiction to review the disallowance decision of the Grant Appeals Board and to grant declaratory and injunctive relief," it could not "order the Secretary to pay the money." App. 6a. The Secretary

criticizes the holding of the First Circuit and argues that the result produces "claim splitting." The Secretary notes, however, that "it is the court of appeals, not the respondent that has split the claims." Pet. at 23 n. 17. The Commonwealth invoked the jurisdiction of the district court to grant complete relief under 28 U.S.C. § 1331, and 5 U.S.C. § 702. App. 89a-90a, and 95a-96a. The purpose of this cross-petition is to renew our jurisdictional argument and obtain a decision by this Court to that effect.

The question presented by the Secretary is not easily separated from the question of complete district court jurisdiction. For example, the Secretary acknowledges that in order for the Tucker Act to apply at all, the APA must be

construed to foreclose district court jurisdiction. Pet. 17-22. The issue thus framed, the briefs of the parties are likely to address the meaning of 5 U.S.C. §§ 701 et seq. The Court could determine that section 702's waiver of sovereign immunity encompasses the Commonwealth's complaint for judicial review, and that that complaint is properly adjudicated in its entirety under the federal question jurisdiction of the district court.

This example illustrates that in the event that the Secretary's petition is granted, it is likely that the briefs of the parties will address, at least by implication, the issue presented by the Commonwealth in its cross-petition. In

the circumstances, it would be inequitable not to permit the Commonwealth to argue that the First Circuit should have held that the district court had jurisdiction to grant complete relief.^{1/}

2. The cross-petition should also be granted because it presents an important issue which was incorrectly decided below and is likely to recur in the absence of plenary review. As we explain above, the First Circuit ruled that injunctive and declaratory relief is available in the district court when the "grant-in-aid dispute" will have a "significant, prospective effect on the ongoing relationship between the

^{1/} See Berkemer v. McCarthy, 468 U.S. 420, 435-6 n. 23 (1984)(issue closely related to the petition considered by the court despite lack of cross-petition, where "both parties have briefed and argued the question").

federal agency and the affected state[.]"
App. 5a. In support of this holding,
the First Circuit characterized the issue
presented by the Commonwealth as the
"scope of the Medicaid program, not just
how many dollars Massachusetts should
have received in any particular year."
App. 5a. The First Circuit held that
"the district court should send the case
back to the Secretary for action consis-
tent with the Medicaid Act as inter-
preted in this decision." App. 6a.

At this point, however, the court of
appeals rejected the argument of the
Commonwealth that the district court
had jurisdiction to order complete re-
lief. The court held that "[s]hould the
Secretary persist in withholding reim-
bursement for reasons inconsistent with
our decision, the Commonwealth's remedy

would be a suit for money past due under
the Tucker Act in the Claims Court[,]"
where the doctrine of collateral estoppel
would apply. App. 6a-7a.

This result misapprehended the nature
of the Commonwealth's case. The case
arose because of a specific, final deci-
sion of a federal agency. In the dis-
trict court, the Commonwealth sought re-
view of the substantive validity of the
underlying adjudicatory decision. The
non-payment of money was not the central
issue presented to the district court.
The Commonwealth assumed that, if the
decision of the Grant Appeals Board were
reversed, the Secretary would abide by
that decision. If that assumption had
proved to be unfounded, the district
court would have been authorized to

enforce its decision by a coercive order requiring the Secretary to abide by his regulations. Whether or not the District Court could enter a money judgment (a form of relief never sought by the Commonwealth), it was clearly empowered to grant full relief, and the court of appeals erred in concluding otherwise. See App. 93a-94a and 98a-99a.

The court of appeals departed on this point from the nearly unanimous decisions of the lower courts (and the previous position of the Secretary), which have found complete district court jurisdiction over disallowance disputes.^{2/} The cross-petition should be granted because if the Court grants the Secre-

^{2/} See cases collected in Argument II of the Commonwealth's Brief in Opposition.

tary's petition, an affirmance of the decision below may not resolve the closely related question of whether the district court had jurisdiction to grant complete relief. That question is an important one likely to recur in future challenges to Medicaid disallowances. Accordingly, if the Court grants the petition of the Secretary, it should grant the cross-petition of the Commonwealth.

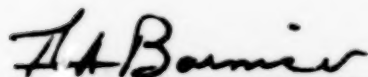
CONCLUSION

For the foregoing reasons, the Commonwealth of Massachusetts requests that if the Secretary's petition for a writ of certiorari is granted, this cross-petition be granted as well.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC WELFARE

Respectfully submitted,

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